

No. 14396.
IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

GUY N. STAFFORD,

Appellant,

vs.

G. M. RUSSELL, JOSEPH R. VAUGHAN, MARY PRATT SANDERS, JOHN B. MADSEN, ANNA B. MADSEN, WILLIAM VAN BEEK, CATHERINE V. VAN BEEK, N. LOUISE KIMBALL, BESSIE S. WEBER, LULU M. REDDISH, BEATRICE CARR ACHSTETTER and WALTER S. BINNS,

Appellees.

BRIEF OF APPELLEES.

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FILED

AUG 1937

PAUL P. O'BRIEN
CLERK

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Appellees.

BRIEF OF APPELLEES.

Statement of Pleadings and Facts.

On July 24, 1953, Appellant herein filed his Complaint in the United States District Court, the gist of the Complaint being that the Superior Court of the State of California for the County of Los Angeles, in Case No. 568-668, had rendered an unconscionable judgment against Appellant, which judgment was affirmed by the District Court of Appeal of the State of California, and by reason whereof the appellant had been discriminated against and deprived of due process [Tr. p. 3, line 10; p. 4, line 3].

On August 17, 1953, respondents herein filed their motion to dismiss the action and noticed the same for September 14, 1953 [Tr. p. 47].

On August 21, 1953, the action was dismissed on the application of Appellant and with the approval of Honorable Ben Harrison, Judge of the United States District Court, Southern District of California, Central Division [Tr. p. 52].

Thereafter, and on April 5, 1954, Appellant moved the said District Court to vacate and set aside the dismissal made pursuant to his application [Tr. p. 60]. The basis of the motion was the uncorroborated assertion by Appellant that he had been coerced by the Superior Court Judge, who had tried Case No. 568-668, into dismissing the District Court action [Tr. p. 54; p. 58, line 17]. The motion to vacate the dismissal was denied by order made April 15, 1954 [Tr. p. 112], and Appellant's motion to reconsider was denied by order dated April 23, 1954 [Tr. p. 120].

Appellant filed Notice of Appeal on May 14, 1954 [Tr. p. 125] wherein he purported to appeal from the order of August 21, 1953, dismissing the action and the order of April 15, 1954, denying his motion to vacate [Tr. p. 121].

Jurisdiction on Appeal.

The purported appeal from the judgment of dismissal entered August 21, 1953, was untimely and the appeal should be dismissed.

Fed. Rules Civ. Proc., rule 73, 28 U. S. C. A.

Question.

The sole question presented on this appeal is whether the trial judge abused his discretion in denying Appellant's motion to vacate.

Argument.

1. The judgment of dismissal being final, relief therefrom rested in the sound discretion of the trial court, whose action is not reviewable in the absence of a showing of abuse of discretion. No such showing appears in the record.

Fed. Rules Civ. Proc., rule 60, 28 U. S. C. A.

3 *Barron & Holtzoff Fed. Prac. & Proc.* 253.

2. The sole purpose of the action filed by Appellant is to obtain review of the decision of the California Superior Court in action No. 568-668; under such circumstances no cause of action is stated which falls within the purview of the District Court.

Rooker v. Fidelity Trust Co., 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362;

William v. Tooke (C. C. A. 5th, Tex.), 108 F. 2d 758; Cert. Den. 311 U. S. 655, 85 L. Ed. 419, 61 S. Ct. 8.

Respectfully submitted,

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J. R. VAUGHAN,

Attorneys for Appellees.

